IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

MFA.No. 590 of 2002(B)

OPMV.514/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
.....

APPELLANT: 3RD RESPONDENT

THE ORIENTAL INSURANCE COMPANY LIMITED
NOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, METRO PALACE,KOCHI-18.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONERS AND 4TH RESPONDENT
---

1. VARKEY THOMAS, S/O.VARKEY,KOOTTUMKAL HOUSE, MELUKAVU KARA,MEENACHIL TALUK.

2. ALEYKUTTY THOMAS,W/O. THOMAS, DO. DO.

3. THRESSIAMMA, D/O. THOMAS, DO. DO.

4. ALEYAMMA D/O. THOMAS, DO. DO.

5. MARYKUTTY, D/O. THOMAS, DO. DO.

6. ANNAMMA D/O. THOMAS, DO. DO.

7. THRESSIAMMA @ SHERLY W/O.LATE GEORGE, DO. DO.

8. NATIONAL INSURANCE COMPANY LIMITED REPRESENTED BY ITS BRANCH MANAGER, THODUPUSHA.

BY ADV. SRI.C.J.JOY
SRI.C.C.ABRAHAM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 7.1.2007, THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

ORDER ON CMP.3580 OF 2002 IN MFA.590 OF 2002:

DISMISSED

Sd/-
J.B.KOSHY, JUDGE

7.11.2007

Sd/-
K.HEMA, JUDGE

/TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.590 OF 20O2

Dated this the 7th day of November, 2007

JUDGMENT

Koshy, J.

The Insurance Company questions the quantum of compensation awarded by the Motor Accidents Claims Tribunal in O.P(MV).514/1996. The father, mother and five sisters along with grand mother of deceased George applied for compensation contending that son of respondents 1 and 2 died in a motor accident due to the negligent driving of the lorry bearing registration No.KL-6/4095. The deceased was a police constable, aged 34. They claimed a total compensation of Rs.13,50,000/-. According to the claim petition, the monthly income of the deceased at the time of death was Rs.2,839/-. The Tribunal has taken Rs.5,000/- as the monthly income. It is contended that the quantum of compensation awarded was enhanced later. It is also contended that originally the award was passed for Rs.3,06,500/- by award dated 25.10.2000. But, later it was enhanced to Rs.5,86,500/- and that enhancement was done without jurisdiction and without notice. It is true that originally the award was passed for Rs.3,06,500/-. Later it was increased to Rs.5,86,500/-. Learned counsel for respondents 1 to 7 submitted while calculating compensation, an arithmetical mistake was made while calculating compensation taking

12 as the multiplier and after holding that 14 is the apt multiplier, only the mistake was corrected. So, only a clerical mistake was corrected. Such mistake can be corrected by the Tribunal even so much and it is not amounting to review and if 14 multiplier is taken with Rs.5,000/- as salary, the amount calculated is correct, even though the proper procedure was that the Tribunal had to give notice and correct it. But we note that only a clerical mistake was corrected and in any way as appellate court we are considering the correctness of the certificate.

2. With regard to monthly income, it is true that at the time of accident, he was getting Rs.2,839/-. The petitioners produced a certificate issued from the Police Department showing that if he continued in the department in the normal course, at the time of retirement, he would have got Rs.5,390/- as basic pay alone. Apart from that, D.A and other various allowances also will be given. It was also pointed out that apart from the normal increments, he would have earned the benefit of periodical pay revisions to be implemented by the Government as he was a police constable employed in the State Government. There is possibility for promotion and time bound promotions which is automatic and if that has to be taken, he would have got Rs.10,000/-. Further, retiremental benefits are payable based

on the last drawn salary, throughout his life he will get pension also. As decided by the Supreme Court in General Manager, K.S.R.T.C v. Susamma Thomas ((1999)2 SCC 176), future prospects is a matter to be considered while calculating compensation. Therefore, it was contended that Rs.5,000/- taken as monthly income cannot be excessive. It is true that vagaries of life cannot be predicted. But it is contended that the deceased was the only son of respondents 1 and 2 and others are young daughters and he left his wife at a very younger age. He was maintaining the entire family. It is true that a lesser multiplicant was taken, even though the deceased was 34 years old. A three member bench of th Supreme Court in Smt.Supe Dei and others v. M/s.National Insurance Company Ltd. And another (JT 2002 (Suppl.1) SC 451), held that in 166 claim also second schedule shall be followed. Recently in APSRTC v. Pentaiah Chary it was held that in the absence of exceptional circumstances, second schedule shall be followed in 166 claims also. Here, there are no exceptional circumstances. Taking his age, apt multiplier under second schedule is 17. But the Tribunal has taken only 14. Taking all these into account, we are of the view that it cannot be stated that Rs.5,86,500/- ordered for the death of a 34 year old police constable who was maintaining a large family is a very

huge amount so as to warrant interference from the appellate court. However, considering the present rate of interest, we reduce the interest rate from 12% to 9%. The award is modified to that effect.

The appeal is disposed of accordingly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.590 OF 2002

JUDGMENT

7.11.2007